

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PAUL SALADINO, MD,

Index No.: 7:20-cv-09346

Plaintiff,

-against-

FRANK TUFANO,

Defendant.

COMPLAINT

Jury Trial Demanded

Plaintiff Paul Saladino, MD (“Dr. Saladino”), through his undersigned attorneys, as and for his Complaint against Defendant Frank Tufano (“Defendant Tufano”), alleges as follows:

STATEMENT OF CASE

1. This is an action for money damages and corrective and injunctive relief due to Defendant Tufano’s wrongful and malicious campaign over the last year to attack Dr. Saladino and Dr. Saladino’s business and services as a licensed physician and a certified functional medicine practitioner, in order to promote his own competing health consultancy business.

2. Defendant Tufano has created and published over half a dozen defamatory videos that contain numerous false statements of fact as well as misrepresentations about Dr. Saladino and his services. Furthermore, upon information and belief, Defendant Tufano created and registered the domain name <PaulSaladino.com> on October 23, 2020 and immediately began pointing it to a defamatory website containing, inter alia, sexually graphic and homophobic images of Dr. Saladino, as well as links to the defamatory videos created and published by Defendant Tufano on his YouTube Channel, which Defendant Tufano uses to promote his competing business interests.

3. Dr. Saladino is thus forced to bring this action to recover damages and for injunctive relief to seek redress for and stop the blatant harassment and defamation by Defendant Tufano, and to order the removal and destruction of the defamatory videos, website, and domain name that encompasses Dr. Saladino's distinctive PAUL SALADINO mark in its entirety..

PARTIES

4. Dr. Saladino is an individual residing in San Diego, California.
5. Defendant Tufano is an individual residing in Thornwood, New York.

JURISDICTION AND VENUE

6. This Court has original subject matter jurisdiction pursuant to 28 U.S. Code § 1332 (a) (1).

7. This Court also has original subject matter jurisdiction pursuant to 28 U.S.C. § 1331, since Plaintiff brings claims under 15 U.S.C. § 1125, and pendent jurisdiction over the related state law claims asserted pursuant to 28 U.S.C. § 1367 because they involve the same parties, they arise from the same operative facts common to the causes of action arising under the federal claims, and because the exercise of pendent jurisdiction serves the interests of judicial economy, convenience and fairness to the parties.

8. This Court has personal jurisdiction over Defendant Tufano since Defendant Tufano resides and transacts business in New York.

9. Venue is proper in this judicial district under 28 U.S.C. § 1391(b) (1).

FACTS RELEVANT TO ALL CLAIMS

Background

10. Dr. Saladino is a licensed physician and a certified functional medicine practitioner through the Institute for Functional Medicine.

11. Dr. Saladino is passionate about understanding and correcting the roots of chronic disease and using this information to help patients enjoy better lives. To that end, he is one of the leading authorities on the science and application of the carnivore diet to human wellbeing.

12. Dr. Saladino offers fee-based private consultation services to consumers regarding use of a carnivore diet to treat medical conditions. He has used this diet to reverse autoimmunity, chronic inflammation, and mental health issues in hundreds of patients.

13. Dr. Saladino is the best-selling author of *The Carnivore Code: Unlocking the Secrets to Optimal Health by Returning to our Ancestral Diet*, published by Houghton Mifflin Harcourt. The book is currently a top-ten best seller on Amazon.com in the category of men's health books.

14. Dr. Saladino maintains a social media presence on the internet, including on YouTube, Twitter, and through numerous collaborative podcasts including The Minimalists, Bulletproof Radio, The Dr. Gundry Podcast, The Ben Greenfield Podcast, Dr. Mercola, Health Theory, Mark Bell's Power Project, the Joe Rogan Experience, and many others.

15. Dr. Saladino is the owner of all common law rights to the PAUL SALADINO trademark (the "PAUL SALADINO Mark"), and has used his first and last name in commerce and on the internet and social media since as early as June 2017.

16. Dr. Saladino created and registered <PaulSaladinoMD.com> in October 2017 and shortly thereafter pointed the domain to a website that promotes his business and services.

17. Dr. Saladino operates a San Diego-based business under the PAUL SALADINO Mark which involves his specialty and promotes the use of a carnivore diet to treat health issues and lead better lives (the "Business"). The Business caters to four (4) varieties of customers: (1) YouTube viewers which generate advertising revenue through the YouTube platform; (2) third-

party social media podcasters who desire Dr. Saladino's audio, video, and real-time interactive content; (3) purchasers of Dr. Saladino's merchandise, including a line of nutritional supplements; and (4) patients who desire private consultation for the treatment of health issues.

18. Dr. Saladino has used the PAUL SALADINO Mark continuously and extensively in connection with the marketing of the Business. As a result, Dr. Saladino has established a reputation and goodwill in his personal name separately as a trademark. The PAUL SALADINO Mark is unique, distinctive, and has acquired distinctiveness through its association with Dr. Saladino's Business as advertised and sold throughout the United States.

19. For example, as a result of Dr. Saladino's efforts, and his association with the PAUL SALADINO Mark, his YouTube channel has over 67,000 subscribers, his Twitter account has over 40,000 followers, and his book, *The Carnivore Code*, has recently released a second edition.

20. Defendant Tufano also maintains a presence on social media, and publishes videos and written statements, including on YouTube and Twitter, to promote his own fee-based medical nutritional therapy services regarding use of a carnivore diet to treat medical conditions.

21. Upon information and belief, Defendant Tufano is not licensed to provide medical nutritional therapy.

22. Dr. Saladino and Defendant Tufano are competitors: they compete for consumers and viewers in the same industry.

23. Upon information and belief, Defendant Tufano saw the growth of Dr. Saladino's presence on social media, and the spread of Dr. Saladino's good reputation, as a threat to his own enterprise, which is similar in vision to that of Dr. Saladino's.

24. Defendant Tufano has undertaken a malicious campaign to spread false information and attack Dr. Saladino's good character and reputation for the purpose of hurting Dr. Saladino's business, and to benefit his own, competing business.

25. The coordinated and persistent advertising campaign includes a half a dozen videos directly attacking Dr. Saladino and making numerous false representations of fact. More recently, on October 23, 2020, Defendant Tufano, upon information and belief, registered and created the domain name <PaulSaladino.com> and immediately began pointing it to a defamatory website containing, *inter alia*, sexually graphic and homophobic images of Dr. Saladino, as well as links to the defamatory videos created and published by Defendant Tufano on his YouTube Channel, which he uses to promote his own competing business interest.

Defendant Tufano's Defamatory, False, and Misleading Statements about Dr. Saladino

26. Defendant Tufano uses his social media presence to attack Dr. Saladino and to distribute the false, defamatory, and misleading statements he has made about Dr. Saladino, including by using his publicly-available YouTube Channel account "Frank Tufano" (Defendant Tufano's "YouTube Channel").

27. On November 7, 2019, Defendant Tufano published a 15-minute video on his YouTube channel titled "Copy Pasta Salad" which features Defendant Tufano speaking directly to the camera and talking almost exclusively about Dr. Saladino throughout the video (the "First Nov. 7, 2019 Video").

28. The First Nov. 7, 2019 Video includes a pinned top message which states: "franktufano@gmail.com for fitness/diet consulting." The First Nov. 7, 2019 Video has over 21,000 views.

29. Within the First Nov. 7, 2019 Video, Defendant Tufano describes himself as the source of all of Dr. Saladino's carnivore diet information, and describes Dr. Saladino as a dishonest and uncaring thief and drug user who is unqualified to provide dietary advice.

30. Specifically, Defendant Tufano made the following statements in the First Nov. 7, 2019 Video, each of which is false:

- a. Dr. Saladino “[has] to copy me word for word;”
- b. Dr. Saladino “is willing to blatantly lie;”
- c. “[E]very single thing mentioned” on Dr. Saladino’s podcast “was ripped directly from [Defendant Tufano’s] videos;”
- d. “All [Dr. Saladino] cares about is making money and promoting himself;”
- e. Dr. Saladino’s “sole purpose is to steal other people’s information;”
- f. “[N]ot one word that comes out of [Dr. Saladino’s] mouth is an original thought;”
- g. Saladino “plagiarized” material from Tufano;
- h. “[Y]ou can pay this clown doctor [Dr. Saladino] a thousand dollars for a half-assed explanation of [Defendant Tufano’s] videos;” and
- i. “[S]omeone has to pay for [Dr. Saladino’s] Adderall prescription.”

31. On November 7, 2019, Defendant Tufano also published a video on his YouTube channel titled “Carnivores don’t cover their tracks” which features Defendant Tufano speaking directly to the camera and includes numerous statements about Dr. Saladino (the “Second Nov. 7, 2019 Video”). The Second Nov. 7, 2019 Video has over 12,000 views.

32. Within the Second Nov. 7, 2019 Video, Defendant Tufano asserts that Dr. Saladino pays people to downvote Defendant Tufano’s videos on social media, and that Dr. Saladino is a long-time drug user.

33. Specifically, Defendant Tufano made the following statements, each of which is false:

- a. “[Dr. Saladino] has failed to build a supportive audience to such an extent that he still needs to pay people to dislike my videos;” and
- b. “I think [Dr. Saladino’s] brain is literally destroyed from all the amphetamines he’s been using over the past 20 years.”

34. Also within the Second Nov. 7, 2019 Video, Defendant Tufano admits that he “has been banned from all of the carnivore communities on Facebook and Reddit” but then further admits to creating a new account on Reddit and posting messages regarding Dr. Saladino on the two most popular carnivore forums on that social media site.

35. The Reddit messages were titled “Popular Carnivore Questions answered by Paul Saladino, MD” and “Great Q & A with Paul Saladino!” and included time stamps of content from actual Dr. Saladino videos such that the included hyperlinks appeared to link to Dr. Saladino’s videos, but the disguised hyperlinks actually linked to Defendant Tufano’s First Nov. 7, 2019 Video on his YouTube channel. The messages have since been removed by Reddit.

36. On February 5, 2020, Defendant Tufano published a video on his YouTube Channel entitled “CarnivoreMD Paul Saladino’s Plagiarism” which has over 14,000 views, and which contains many of the same defamatory statements and false misrepresentations as the above videos.

37. On October 16, 2020, Defendant Tufano published a video on his YouTube Channel entitled “CarnivoreMD Paul Saladino COPIED his way to the JOE ROGAN Experience,” which features Defendant Tufano again peaking directly to the camera and includes

numerous statements about Saladino (the “October 16, 2020 Video”). The October 16, 2020 Video has over 15,000 views.

38. The October 16, 2020 video contains multiple general and specific misrepresentations of fact about Dr. Saladino and his services, including that Dr. Saladino “plagiarized” Defendant Tufano; that Dr. Saladino “plagiarized throughout medical school”; that Dr. Saladino “used [Defendant Tufano’s] information” on the Ben Greenfield Podcast; and that Dr. Saladino has “hundreds of social media workers” monitoring comments.

39. Defendant Tufano’s campaign attacking Dr. Saladino has included at least three more such defamatory videos, including videos on: October 17, 2020 entitled “Joe Rogan Paul Saladino Plagiarism Livestream Analysis” which has over 12,000 views; October 18, 2020 entitled “Paul Saladino SUED ME and LOST! STILL OUT \$13,000!” which has over 13,000 views; and on October 31, 2020 entitled “PLAGIARIZED OVER 50 TIMES! on the Joe Rogan Podcast by Paul Saladino” which has over 9,000 views. (All of the defamatory videos described herein as the “Defamatory Videos”).

Defendant Tufano Wrongfully Registers PaulSaladino.com

40. On October 23, 2020, the domain name <paulsaladino.com> was created and registered (the “Domain Name”).

41. Upon information and belief, Defendant Tufano created and registered the Domain Name, taking his malicious campaign against Dr. Saladino to a whole new level.

42. Within days of being registered, the Domain Name began directing to a defamatory website that contains, inter alia, sexually graphic and homophobic images of Dr. Saladino, as well as links to Defendant Tufano’s YouTube Channel, which he uses to promote

his own competing business, and links to nearly all of the Defamatory Videos (the “Defamatory Website”).

43. Additionally, featured prominently front and center on the Defamatory Website is the following text:

Paul Saladino, MD, is apparently “the leading authority on the Carnivore Diet.” But what does that make Frank Tufano if Paul has learned everything from Frank’s YouTube channel?

FIRST CLAIM FOR RELIEF

Violation of 15 U.S.C. § 1125(a) – False and misleading representations of services

44. Dr. Saladino repeats, realleges, and incorporates the preceding paragraphs herein as if fully stated under this claim.

45. The Defamatory Videos, Domain Name, and Defamatory Website contain Dr. Saladino’s real name, to which Dr. Saladino has common-law rights to and in.

46. The Defamatory Videos and Defamatory Website state facts about Dr. Saladino that are false, misleading, and that misrepresent the nature of Dr. Saladino’s services, as described supra.

47. As a direct and proximate result of Defendant Tufano’s unlawful, deliberate, and malicious conduct as set forth above, Dr. Saladino has been, and will continue to be, damaged both irreparably and monetarily.

SECOND CLAIM FOR RELIEF

Violation of 15 U.S.C. § 1125(d) - Cyberpiracy

48. Dr. Saladino repeats, realleges, and incorporates the preceding paragraphs herein as if fully stated under this claim.

49. Dr. Saladino is the owner of all common law rights to the PAUL SALADINO Mark. It is unique, inherently distinctive, and has acquired distinctiveness through its association with Dr. Saladino's Business.

50. The Domain Name contains the PAUL SALADINO Mark in its entirety. Defendant Tufano in bad faith is profiting off of Dr. Saladino's name by diverting potential consumers away from Dr. Saladino and towards Defendant Tufano's business and YouTube Channel.

51. Defendant Tufano has no other legitimate rights to or in the Domain Name or Dr. Saladino's name.

52. Defendant Tufano had no prior use of the Domain Name.

53. Defendant Tufano attempted to mask his identity by registering the Domain Name anonymously.

54. As a direct and proximate result of Defendant Tufano's unlawful, deliberate, and malicious conduct as set forth above, Dr. Saladino has been, and will continue to be, damaged both irreparably and monetarily.

THIRD CLAIM FOR RELIEF
Violation of NY Gen Bus L § 148 – Unlawful registration of domain name

55. Dr. Saladino repeats, realleges, and incorporates the preceding paragraphs herein as if fully stated under this claim.

56. The Domain Name and Defamatory Website contain Dr. Saladino's real name, to which Dr. Saladino has common-law rights to and in.

57. Defendant Tufano in bad faith is profiting off of Dr. Saladino's name by diverting potential consumers away from Dr. Saladino and towards Defendant Tufano's business and YouTube Channel.

58. Defendant Tufano has no other legitimate rights to or in the Domain Name or Dr. Saladino's name.

59. Defendant Tufano had no prior use of the Domain Name.

60. Defendant Tufano attempted to mask his identity by registering the Domain Name anonymously.

61. As a direct and proximate result of Defendant Tufano's unlawful, deliberate, and malicious conduct as set forth above, Dr. Saladino has been, and will continue to be, damaged both irreparably and monetarily.

FOURTH CLAIM FOR RELIEF
Violation of NY Gen Bus L § 349- Unfair and deceptive trade practices

62. Dr. Saladino repeats, realleges, and incorporates the preceding paragraphs herein as if fully stated under this claim.

63. As described herein, the publishing and republishing of the Defamatory Videos and the use of the Domain Name and Defamatory Website employed deception, false pretense, and misrepresentation of material facts concerning Dr. Saladino and his services, with the intent that others rely upon such misrepresentation in connection with the sale and advertisement of Dr. Saladino's services.

64. As a direct and proximate result of Defendant Tufano's unlawful, deliberate, and malicious conduct as set forth above, Dr. Saladino has been, and will continue to be, damaged both irreparably and monetarily.

SIXTH CLAIM FOR RELIEF
Defamation per se

65. Dr. Saladino repeats, realleges, and incorporates the preceding paragraphs herein as if fully stated under this claim.

66. Defendant Tufano intentionally made false statements of fact about Dr. Saladino in the Defamatory Videos.

67. These statements, as described herein, were made maliciously and willfully, and were intended to and did cause harm to Dr. Saladino's business integrity and reputation.

68. The statements were made with reckless disregard for their truth and/or with knowledge of their falsity, and with wanton and willful disregard of the reputation and rights of Dr. Saladino.

69. The statements were made of and concerning Dr. Saladino and were so understood by those who read Defendant Tufano's publication of them.

70. Defendant Tufano has no privilege to assert the false and disparaging statements.

71. As a direct and proximate result of Defendant Tufano's unlawful, deliberate, and malicious conduct as set forth above, Dr. Saladino has been, and will continue to be, damaged both irreparably and monetarily.

PRAYER FOR RELIEF

72. **WHEREFORE**, by reason of the acts and circumstances alleged herein, Dr. Saladino seeks relief from this Court as follows:

- a. Judgment on each of the claims set forth above;
- b. An award of compensatory damages according to proof at trial, but in an amount no less than \$500,000.00, as well as punitive and exemplary damages where authorized, including from the Lanham Act and common law, due to Defendants' willful and wanton behavior;
- c. An award of statutory damages of \$100,000 pursuant to 15 U.S.C. § 1117(d);
- d. An order enjoining Defendant and those in active concert with Defendant from publishing any further defamatory statements concerning Dr. Saladino;

- e. An order directing Defendant Tufano to delete and remove the Defamatory Videos from his YouTube Channel;
- f. An order directing Defendant Tufano to immediately take down the Defamatory Website;
- g. An order directing Defendant Tufano to undertake such remedial efforts as the Court deems necessary to restore Dr. Saladino's reputation;
- h. An order directing Defendant to transfer ownership of the Domain Name to Dr. Saladino;
- i. Prejudgment and post-judgment interest at the applicable rate;
- j. An award for reasonable attorney's fees, costs and disbursements; and
- k. Such other and further relief the Court deems proper and just.

DEMAND FOR TRIAL BY JURY

Please take notice that Dr. Saladino hereby demands trial by jury for all issues so triable.

Dated: Brooklyn, New York
November 7, 2020

Respectfully Submitted:

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